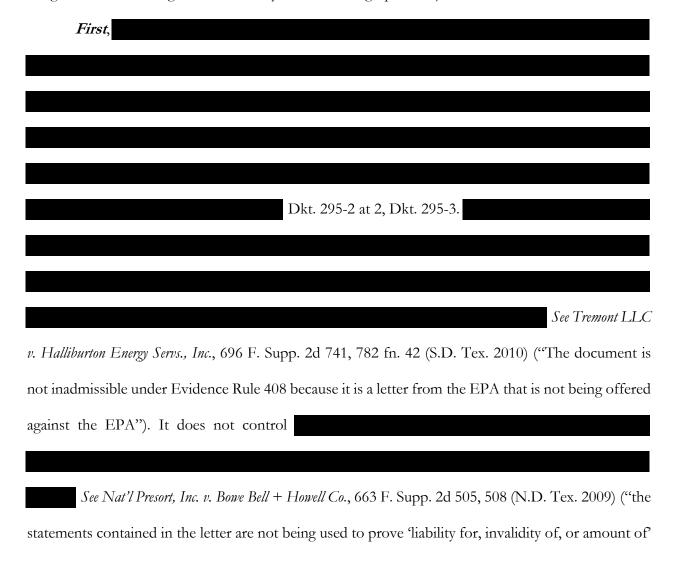
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

NETLIST, INC.,)
Plaintiff,)) Case No. 2:22-CV-203-JRG
VS.)
) JURY TRIAL DEMANDED
MICRON TECHNOLOGY, INC.,)
MICRON SEMICONDUCTOR	
PRODUCTS INC., MICRON	
TECHNOLOGY TEXAS LLC,)
Defendants.))

NETLIST INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT DISMISSING MICRON'S AFFIRMATIVE DEFENSE OF BREACH OF RAND OBLIGATION OR IN THE ALTERNATIVE FOR SEVERANCE (DKT. 280)

Micron does not dispute that, at minimum, its RAND defense is an equitable issue that should be severed from the jury trial. Dkt. 295 at 1 ("nor has Micron claimed this equitable defense should be tried by the jury"). Micron likewise does not dispute that, if the Court grants summary judgment the patents are not standard essential, its RAND defense fails as well. *Id*.

Micron disputes, however, whether summary judgment is appropriate for the additional reason that Netlist's RAND proposals to Micron included foreign patents, and therefore this Court lacks jurisdiction to address them. *See Optis Wireless Tech., LLC v. Apple Inc.*, 2020 WL 999463, at *3 (E.D. Tex. Mar. 2, 2020) (court lacks jurisdiction to address whether SEP holder has "complied with their obligations under foreign laws or as they relate to foreign patents").



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)

Second, Micron concedes that the test for jurisdiction is whether "the U.S. components of

any claim. Rather, they are being offered to establish jurisdiction.") (internal citations omitted).

the license offers could [] be extricated from the foreign components in any meaningful way," Optis, 2020 WL 999463, at *4, but argues that there is evidence that would allow the Court to determine this. This argument fails. As to But as discussed above, that is wrong, and Micron does not engage with the fact Opp. at 6-7. Micron Dkt. 280-7 at 3. Further, the "calculations" Micron refers to Id. at 1-2. Netlist's actual Ex. 10 (Westergard) at 79:15-23

Third, Micron attempts to distinguish this Court's decision in Optis. But just as in that case, Micron, as the party asserting an affirmative defense and bearing the burden of proof, has produced

Dated: December 6, 2023

Respectfully submitted,

/s/ Jason G. Sheasby

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CERTIFICATE OF SERVICE

I hereby certify that, on December 6, 2023, a copy of the foregoing was served to all counsel of record.

/s/ Yanan Zhao Yanan Zhao

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that the foregoing document and exhibits attached hereto are authorized to be filed under seal pursuant to the Protective Order entered in this Case.

/s/ Yanan Zhao Yanan Zhao